

State of Colorado



Bill Owens
Governor

Richard Djokic
Director

DPA

Department of Personnel
& Administration

State Personnel Board

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Meeting Minutes July 20, 2004

The State Personnel Board met in public session on Tuesday, July 20, 2004, at the Colorado Department of Natural Resources, 1313 Sherman Street, Room 318, Denver, Colorado 80203.

The meeting was called to order by Vice-Chair John Zakhem at approximately 9:05 a.m. In addition to Mr. Zakhem, Board members Diedra Garcia and Troy Eid were present. The following Board member was present via telephone: Elizabeth Salkind. Board member Linda Siderius arrived at approximately 9:20 a.m.

Richard Djokic, Board Director; Assistant Attorney General Andrew Katarikawe, Board Counsel; and Jane Sprague, General Professional III, were present in person.

ANNUAL ELECTION OF BOARD CHAIR AND VICE-CHAIR FOR FISCAL YEAR 2004 – 2005

The annual election of Board Chair and Vice-Chair took place after all Board members had arrived at the meeting.

Ms. Garcia moved and nominated Mr. Zakhem for Chair of the Board for Fiscal Year 2004-2005. Mr. Eid seconded the motion. Ms. Siderius moved to close the nominations. Ms. Garcia seconded the motion. The motion to close the nominations was carried unanimously. The nomination of Mr. Zakhem as Board Chair passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

Mr. Eid moved and nominated Ms. Garcia for Vice-Chair of the Board for Fiscal Year 2004-2005. Mr. Zakhem seconded the motion. Mr. Eid moved to close the nominations. Mr. Zakhem seconded the motion. The motion to close the nominations was carried unanimously. The nomination of Ms. Garcia as Board Vice-Chair passed

on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, Ms. Siderius, and Mr. Zakhem.

I. REQUESTS FOR RESIDENCY WAIVERS

A. July 1, 2004 Report on Residency Waivers

Mr. Djokic reported that there was one residency waiver request which was granted in the last month.

II. PENDING MATTERS

There were no pending matters before the State Personnel Board this month.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

There were no Initial Decisions or other final Orders of the Administrative Law Judges or the Director on appeal to the State Personnel Board this month.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

A. Robert Gallardo v. Department of Corrections, Division of Adult Parole and Community Corrections, State Personnel Board case number 2004G046.

Ms. Garcia moved to reject the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing, stating that there were timeliness and training issues and that Complainant's grievance remained unresolved. There was no second to the motion. Ms. Salkind then moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Zakhem seconded the motion. That motion failed on a split vote, as follows: Ms. Salkind and Mr. Zakhem voted in favor of the motion, and Mr. Eid and Ms. Garcia voted in opposition to the motion. Finally, Ms. Garcia moved a second time to reject the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, and Mr. Zakhem. Ms. Salkind voted in opposition to the motion. Ms. Siderius was absent.

B. Rita Kelly v. Department of Human Services, State Personnel Board case number 2004G061.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Mr. Eid seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Salkind, and Mr. Zakhem. Ms. Siderius was absent.

- C. Judith Schweitzer v. Department of Public Safety, Colorado State Patrol, State Personnel Board case number 2003G057.

Director Djokic recused himself from participation in the discussion of this case. Ms. Sprague called the case number and the vote in lieu of the Director.

Ms. Garcia moved to adopt the Preliminary Recommendation of the Board's Director and deny the petition for hearing. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Ms. Siderius, and Mr. Zakhem. Ms. Salkind voted in opposition to the motion. In addition, Ms. Salkind requested that typographical errors on pages 1 and 7 be corrected.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Larry Barron v. Department of Labor and Employment, Office of Field Operations, State Personnel Board case number 2004B088.

On June 10, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's termination of Complainant's employment was arbitrary, capricious or contrary to rule or law and Complainant is entitled to attorney fees and costs. The ALJ ordered that the termination is rescinded; Respondent is to reinstate Complainant to his former position as a Labor and Employment Specialist I with back pay and benefits to the date of termination.

- B. Victor Nevins v. Department of Human Services, Division of Youth Corrections, State Personnel Board case number 2003B100.

On June 14, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's disciplinary pay reduction and termination of Complainant's employment were not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's actions are affirmed and Complainant's appeals are dismissed with prejudice.

- C. James Masse v. Department of Corrections, State Personnel Board case number 2003B077.

On June 16, 2004, an Amended Initial Decision of the Administrative Law Judge was issued. The Board, at its regularly schedule meeting held on June 15, 2004, reviewed the Initial Decision issued by the Administrative Law Judge in this matter on May 10, 2004. While no formal action was required nor taken relative to the Initial Decision by the Board, certain scrivener's errors were noted in the Findings of Fact in the Initial Decision.

- D. Mary Scott Filson v. Colorado State University, Human Resources Services, State Personnel Board case number 2004B075.

On July 8, 2004, the Initial Decision of the Administrative Law Judge was issued. The ALJ found that Respondent's termination of Complainant's employment was not arbitrary, capricious or contrary to rule or law. The ALJ ordered that Respondent's action is affirmed and Complainant's appeal is dismissed with prejudice.

VI. REVIEW OF THE MINUTES FROM THE JUNE 15, 2004 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Garcia moved to approve the minutes of the June 15, 2004 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem. Mr. Eid and Ms. Siderius abstained because they were not present at that meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 15, 2004 PUBLIC MEETING:

- A. Harlen Ainscough v. Department of Public Health and Environment, Hazardous Materials & Waste Management Division, State Personnel Board case number 2003G114.

The Board affirmed the Order of the State Personnel Board Denying Petition for Hearing and denied Complainant's Motion for Reconsideration.

- B. Carol Roberson v. Regents of the University of Colorado, University of Colorado Health Science Center, State Personnel Board case number 2002G145.

The Board voted to adopt the Preliminary Recommendation of the Board Director and deny the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR - JEFF WELLS

Executive Director Wells reported on several matters, beginning with the total compensation package, which is due on August 1, 2004. He stated that the Department of Personnel and Administration (DPA) has not yet met with the Office of State Planning and Budget (OSPB), but has plans to continue to move forward to get employees up to the prevailing rate in this area. Last year, there was a 2% salary increase for all employees, a 1.1% average payout in pay for performance, and a good increase in the employer-paid portion of health insurance for employees from 38% to 56%. This year, the goal is to move the employer-paid portion of health insurance up to an average of 66% of the prevailing rate, and over 5 years to get to 100%; to fund the entire salary survey at 2.9%; and to pay at least 1.2% on average in pay for performance. Slowly raising the minimum a couple of percentage points per year in pay for performance will lead to an increase in employee morale and will move the pay ranges up as well.

Mr. Wells reported that the health insurance package is being redesigned to shift from calendar to fiscal year and evaluated for self-funding. State actuaries have stated that the shift from calendar to fiscal year is possible as is self-funding, although employees may not see a significant reduction in price for the first two years of self-funding. Health insurance providers have been asked to bid in two ways: as a continuing provider and as an administrator of self-insurance. There is also a plan design for a health savings account, \$1000 per individual and \$5000 per family, which rolls over to the next year, if unused.

With regard to lawsuits, legislation, and rule changes, Pat Romero and Jeff Schutt discovered the old statute about the moonlighting question and House Bill 1446 has remedied this issue, bringing about a rule change. There was also the "opt out" bill for Higher Education, House Bill 1009, in which Higher Education could opt out of the risk management program, property and liability, and worker's compensation. In the payroll deduction lawsuit, Ainscough v. Owens, the trial court granted summary judgment, but the Colorado Supreme Court found that labor associations did have standing and remanded the case to the district court. Finally, there will be rulemaking to address the multiple vacancy situation following recommendations on how to make it work.

Director Djokic remarked that there was going to be training on Senate Bill 007 (Higher Education opting out of the personnel system) and how it's going to work with regard to exemptions.

Following Ms. Garcia's question as to how to establish priorities among health insurance, salary survey, and pay for performance, Mr. Wells stated that he looks first at "the pot of dollars" - \$87 million in new money this year compared to last year's \$45 million. While DPA recommended that salary survey be funded at 2.9% and ended up at 2%, health insurance was taken from 38% of the

prevailing level to 56%. He said that the priority is salary increases first, then health insurance, and finally pay for performance.

Mr. Eid referenced his motions to go outside the metropolitan area for Board meetings, and Mr. Wells stated that he agrees with the concept, as cabinet meetings for the governor have been held all around the state.

Mr. Zakhem then thanked Mr. Wells for coming to the meeting.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Report and Revenue and Expense Report
- Cases Scheduled for Preliminary Review
- Cases on Appeal to the Board and to Appellate Courts
- Web Site Statistics (May 2004)
- Mandate/Order Affirmed in Brown v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2002B043, Court of Appeals No. 03CA244
- Mandate/Order Affirmed in Rura v. Board of Governors of the Colorado State University System, Department of Higher Education State Board of Agriculture, Colorado State University, State Personnel Board case number 2001G117, Court of Appeals No. 02CA1957

In addition to the above administrative matters, Director Djokic reported that the Board budget was \$2,500 under appropriations at the end of the fiscal year. Ms. Garcia questioned the purpose of the web site statistics. Mr. Djokic stated that the statistics show that people are looking at decisions and orders. Mr. Zakhem and Ms. Siderius agreed that the Board should continue to receive the web site statistics.

With regard to Board forms on the web site (appeal, grievance, and whistleblower complaint), Mr. Djokic reported that the forms are to be redone in writable or "PDF fill-able" form to make them user-friendly. In addition, the goal for the Board is to receive electronic information from Complainants in petitions for hearing with an "electronic date stamp" to streamline the preliminary review process. Ms. Garcia and Ms. Salkind remarked that for those with no computer access, the Board would need to continue to accept hard copies of information in petitions for hearing.

Mr. Eid said he was happy to be a member of the Board and was looking forward to working with everyone; as a grievance officer, he appreciates the administrative law judges and hearing officers. He stated that at the next meeting, he is going to make a motion to endorse the Civil Service Reform bills and requested that the bluebook versions of House Bill 04-

1373 and House Concurrent Resolution 04-1005 be provided to the Board members in the next packet. He made a motion that as a target, the goal of the Board is to hold every third Board meeting outside the metropolitan area and to do training while in the area of the meeting. Ms. Garcia seconded the motion. A discussion on the merits and practicality of having Board meetings outside of the Denver metropolitan area ensued.

Ms. Salkind commented that she supports the idea of having meetings outside the Denver area, but practically speaking, the cost of travel is high, as she well knows from her travels to and from Durango. She also remarked on the difficulty of flying from Durango to anywhere but Denver. Both Mr. Eid and Ms. Garcia offered to "put per diems in the pot" to help support the idea. Ms. Siderius proposed that staff look at the concept, run some numbers, and analyze the idea from the budgetary standpoint. Ms. Salkind suggested the Board look at options, like teleconferencing. Mr. Eid, asserting that "we are too Denver-centered," again moved to establish that the goal of the Board is to hold every third meeting outside of Denver. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, and Mr. Zakhem. Ms. Salkind and Ms. Siderius voted in opposition to the motion. Mr. Eid then made a second motion to hold the September 21, 2004 meeting in Durango, Colorado. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Mr. Eid, Ms. Garcia, Mr. Zakhem, and Ms. Salkind. Ms. Siderius voted in opposition to the motion. Mr. Zakhem then requested that Board members and staff schedule the September 21, 2004 meeting on the calendar and find a location which would accommodate both the Board meeting and training that would occur after the meeting.

B. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

The Board did not go into Executive Session and the meeting ended by consensus.

X. EXECUTIVE SESSION

A. Case Status Report

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APPROVED THIS 17th DAY OF AUGUST, 2004.

John Zakhem, Chair

Diedra Garcia, Vice-Chair

Troy Eid, Member

Elizabeth Salkind, Member

Linda Siderius, Member